

As Mr. Moore and Mr. Deere described in their testimonies,³² Conditioning involves preparing and issuing an order, traveling to the outside plant locations and preparing underground, buried or aerial sites for work and then performing the actual work to disconnect each interfering device.³³ To condition a loop, SWBT performs actual work for which SWBT is entitled to recover under the FTA.³⁴

The FCC recognized the labor and expense required to condition an existing standard voice grade loop for DSL service, making clear that the requesting CLEC would have to bear the cost for such request:

Our definition of loops will in some instances require the incumbent LEC to take affirmative steps to condition **existing** loop facilities to enable requesting carriers to provide services not currently provided over such facilities. For example, if a competitor seeks to provide a digital loop functionality, *such as ADSL*, and the loop is **not currently** conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals...*The requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning.* (emphasis added) (FCC footnotes omitted)³⁵

Last Spring, the FCC echoed its finding from 1996. In its March 31, 1999 Order, the FCC stated, "'Conditioning' loops to remove those impediments (excessive bridged taps, loading coils and other devices)...*can be expensive.*"³⁶ Last summer, the FCC stated that such Conditioning is "time consuming" and a "costly process,"³⁷ and the

³² Deere Rebuttal, p. 14, SWBT Ex. 7; Moore Rebuttal pp. 18-19, SWBT Ex. 8; and Moore Direct, p. 3, Schedule 2, SWBT Ex. 4A, 8A, 38.

³³ *Id.*, see also June 4, 1999 Tr. at 1253.

³⁴ Deere Rebuttal, p. 14, SWBT Ex. 7.

³⁵ First Report and Order, FCC Docket No. 96-98 (August 8, 1996), at ¶ 382.

³⁶ FCC 99-48. (emphasis added)

³⁷ FCC 98-147, August 7, 1998, footnote 316.

Missouri Commission found that Conditioning activities "undeniably result in real costs to SWBT," and ruled that SWBT should be compensated for such work.³⁸

1. SWBT Will Never Recover Its Costs If A Factor Of 1/25 or 1/50 Is Used

The effect of the Award's logic on Conditioning costs is that it does not permit SWBT to recover its costs. Decreasing rates by the 1/25 or 1/50 multiple used by the Arbitrators means that SWBT will not be compensated for the remaining 24/25 or 49/50 of its costs (which the Award recognized).³⁹ This is because there is no basis for believing that another 24 or 49 CLECs (as applicable) will request Conditioning of the binder group in question and then pay for it. The Award leaves unanswered how SWBT would be compensated if it follows the Award's direction and conditions an entire binder group. Once that binder group is conditioned, it is unclear whether the Commission will permit SWBT to be paid by subsequent CLECs who order a loop out of that conditioned binder group, yet who do not need to order Conditioning at that point, as the loops would already be conditioned. Absent those additional 24 or 49 CLECs requesting and paying for Conditioning, SWBT will not be compensated for the costs which the Award acknowledges actually occur. This is contrary to the dictates of FTA Section 252(d) and Section 251(c)(3).

2. Such Artificially Low Rates Create The Incentive To Seek Unneeded Conditioning

Permitting any party to cause a cost and not pay for it creates an undisciplined environment which results in costs being created unnecessarily (as the cost-causer has

³⁸ *Petition of Sprint Communications Company, L.P. for Arbitration of Unresolved Interconnection Issues Regarding xDSL with Southwestern Bell Telephone Company*, Case No. TO-99-461, August 4, 1999 at p. 5, attached to SWBT's Post-Hearing Brief as Attachment A.

³⁹ Of course, Conditioning entire binder groups was not addressed in SWBT's submitted cost studies. Such Conditioning would likely cost more than the itemized Conditioning proposed by SWBT.

little incentive not to cause a cost).⁴⁰ This leads to an inefficient allocation of telecommunications resources and an inefficient telecommunications infrastructure. A tangible example of this would be the "over conditioning" of the SWBT network that would occur if CLECs order more Conditioning than necessary. CLECs allowed to order Conditioning at a fraction of its actual cost will leave them undisciplined by cost-causer principles. This may cause SWBT to remove designed network components such as bridged tap more often than necessary, eliminating the benefits that accompany the use of such network components. This will pose a risk of service delays to end-users who receive voice service via a loop served by bridged tap, as well as additional costs to SWBT. That is, components such as bridged tap are in the network to facilitate current services. By definition, removal of those devices makes the network less efficient for all services except the DSL being provided. For this reason alone, excess Conditioning should be discouraged. Such "over conditioning" is not in the public interest and not consistent with SWBT's policy of not proactively Conditioning.⁴¹

3. No Basis For Believing Conditioning Of Whole Binder Groups Is Effective

The Award wrongly presumes that Conditioning whole binder groups is effective. This ignores the various types of DSL-based services that are and will be offered by CLECs, and that devices that need to be conditioned are scattered throughout SWBT's network. As a result, Conditioning a binder group where some interferers exist may not eliminate all interferers that need to be removed. As an example, repeaters are service

⁴⁰ In a similar situation, the Missouri Commission found that the burden of Conditioning costs should be borne by the requesting party, characterizing it as a matter of risk sharing. *Petition of Broadspan Communications, Inc. for Arbitration of Unresolved Interconnection Issues Regarding ADSL with Southwestern Bell Telephone Company*, Case No. TO-99-370, Issue Date: June 15, 1999, pp. 10-11, attached to SWBT's Post-Hearing Brief as Attachment C.

⁴¹ June 4, 1999 Tr. at 1379-1380, 1382 and 1384.

specific, and not attached collectively to a binder group. Clearly, there is no basis for assuming SWBT can remove 25 or 50 repeaters at one time.

Moreover, where the end-users will be served will also determine whether any Conditioning can be done at the same location. It is literally impossible to know whether other CLECs will need the same Conditioning requested by another CLEC, at the same time and in the same place. Without such information, there is no public benefit to Conditioning each twisted pair in a binder group. The Missouri Commission rejected a similar argument in June.⁴²

For these reasons, dividing SWBT's costs by any multiple ignores the realities of the network, results in an extreme underestimation in cost and prevents SWBT from recovering its costs. The Commission should not apply such multiples in any future cost proceeding on Conditioning rates.

D. Too Much Conditioning May Harm the Public Switched Telephone Network ("PSTN")

The Award's proposed mass Conditioning also presumes that the so-called interfering devices do not benefit the network today. They do. If load coils are present, it is because they are required to provide voice grade service to customers. Load coils modify the electrical characteristics of the loop to allow better quality voice frequency transmission and improved line supervision characteristics over extended distances. It makes no sense to remove the load coils from loops that are not used to provide DSL services. This would make the loops less suitable or even unusable for traditional voice services. Likewise, bridged tap is in place in order to make more efficient use of cable

⁴² The Missouri Commission stated: "Without some firm knowledge about how many loops will be leased and how long they will be leased, it is impossible to devise a(n) alternative recurring charge that will fully compensate SWBT..." *Petition of Broadspan Communications, Inc. for Arbitration of Unresolved Interconnection Issues Regarding ADSL with Southwestern Bell Telephone Company*, Case No. TO-99-370, Issue Date: June 15, 1999, p. 9, Attached to SWBT's Post-Hearing Brief as Attachment C.

facilities. To remove the bridged tap without a reliable forecast of DSL services will reduce the ability of SWBT to make efficient use of its facilities to serve its basic voice grade customers.⁴³

E. All Digital Loop Rates Should Remain 'As Is' Prior to Additional Cost Proceeding, Subject to True Up⁴⁴

The Award, at pages 87-88, sets interim rates subject to true up after an additional cost proceeding is completed. Although the Award finds that, "The underlying loop facility used for xDSL services is *equivalent* to an analog or digital loop," (emphasis added), the Award sets interim rates for digital xDSL loops that are different than other digital loops (e.g., the same 2-wire digital (ISDN) loop provided for in the UNE Appendix of the T2A. This creates an administrative burden, as the Award requires SWBT to create separate 'NC/NCI' codes to delineate xDSL digital loops from other digital loops when ordering. Digital loops generally 'flow-through' today, as Loop Qualification is not required for such loops. Creating a new DSL-specific digital loop will require additional ordering and billing systems programming. Until this programming is completed, CLECs will not have the benefit of the current flow-through of digital loop orders. Given that the Arbitrators found digital loops to be the same whether used for xDSL or other services, and given that there is a true-up provision, it is appropriate that the rates be the same until the additional cost proceeding is completed.

⁴³ Deere Rebuttal, pp. 12-13, SWBT Ex. 7. See also, discussion at hearing on the benefits of bridged tap, June 4, 1999 Tr. at 1343.

⁴⁴ This subject is addressed in Covad's DSL Appendix, Section 11.1 and Rhythms' DSL Appendix, Section 8.1.

F. Shielded Cross-Connects Should Only Be Offered for ADSL (DPL Nos. 28(a) and 28(b))⁴⁵

SWBT believes that ADSL is the technology that needs the protection of a shielded cross-connect. The Award requires shielded cross-connects for all DSL technologies, even those that are digital in nature. (Indeed, neither Petitioner requested these additional offerings.) Requiring SWBT to offer such a service is burdensome and will not benefit CLECs, as shielded cross-connects are provided in cables containing numerous twisted pair connections. The purpose of allowing a shielded cross-connect option is to allow CLECs to shield their ADSL technologies from disturbance caused by other DSL technologies. Allowing all DSL technologies to be placed within shielded cross-connects defeats the purpose of providing a shielded cross-connect option, as it will "bunch" interfering technologies together. The Commission should not require it and should remove all but ADSL-based shielded cross-connects from the proposed Agreements.

G. Conclusion – Costs and Rates

SWBT supports the spread of high tech services to all customers, but not at the expense of SWBT providing free Loop Qualification and subsidizing the Conditioning of the PSTN. SWBT certainly should be able to recover the costs caused by requests for Loop Qualification and Conditioning of particular loops. Various FCC orders contemplate such compensation, as has the Missouri Commission. The Commission should adopt SWBT's rates and costs methodology which allow recovery of costs in the manner in which those costs are incurred, consistent with Commission requirements and the FTA.

⁴⁵ This subject is addressed in Covad's DSL Appendix, Section 11.3 and Rhythms' DSL Appendix, Sections 3.6 and 8.2.

IV. INTERVALS⁴⁶

A. The Loop Qualification Interval Should Be Consistent With Requirements Established In Project No. 16251⁴⁷

The Commission ordered in its December 16, 1999, Open Meeting that SWBT would provide Loop Qualification Information at parity with its retail operation (and its data affiliate once it commenced operations in Texas). In the Award, SWBT was ordered to provide such information in three business days. SWBT had proposed a three-to-five business day interval.

SWBT objects to a three business day interval based on the uncertainty that accompanies the growth of the DSL market. This is especially the case, given the Award's finding that manual Loop Qualification will be free to CLECs. While SWBT currently can provide Loop Qualification sooner than three days, it is likely that there will be times that it will not be able to do so, especially when it is free. It is more appropriate that SWBT's interval be set at the three-to-five day interval, with a parity obligation attached. A parity requirement would insure that CLECs would receive the benefit of any shorter intervals provided SWBT's retail operations or data affiliate. For this reason, SWBT urges the Commission to acknowledge the uncertain nature of future Loop Qualification requests and establish a Loop Qualification interval of three-to-five business days, with a parity obligation should the interval be shorter for SWBT retail or its data affiliate.

⁴⁶ DPL Issues 15-22.

⁴⁷ This subject is addressed in Covad's DSL Appendix, Section 5.4 and Rhythms' DSL Appendix, Section 6.2.4.

V. PERFORMANCE MEASURES⁴⁸

Although performance measures will be addressed in a future filing in these dockets, it is essential that the Commission understand that the consequence of not categorizing DSL-capable loops by length, as the Award requires. All copper-based DSL technologies are recognized as being subject to linear or exponential service denigration as loop lengths increase. Such services are also more vulnerable to interference from other digital signals as the loop length increases. Therefore, longer loops are more likely to have more maintenance and repair requests, and those requests are likely to require greater expenditures of time to diagnose and repair network problems. Without categorizing loops by length, the average for maintenance and repair intervals are likely to be longer. Performance measures that include all DSL-capable loops should be correspondingly longer as well. SWBT should not be penalized due to the additional demands of longer loops. As a result, SWBT may seek to change performance measures to accommodate the inclusion of longer loops in any performance measures.

VI. CONCLUSION

The Commission should use these dockets to establish the "rules of the road" for efficient and fair interconnection among DSL providers and SWBT. To do this, the Commission should recognize and coordinate with the FCC's requirements for systems enhancements, as uniformity across as many states as possible will lead to efficiencies for both CLECs and SWBT. In addition, the rates established in the Award, and the methodologies for future hearings on rates, must be revised, as they are now

⁴⁸ This subject is addressed in Covad's DSL Appendix, Section 12.1 and Rhythms' DSL Appendix, Section 10.0.

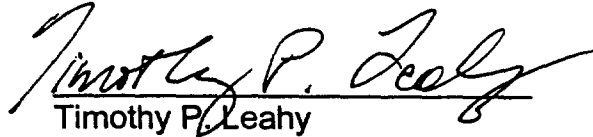
confiscatory, create artificial incentives and are contrary to the FTA. SWBT respectfully requests that the Award and the Agreements be revised or rejected in part, consistent with the arguments made in these Comments.

Finally, SWBT respectfully submits that it is entitled to a rehearing to brief matters relied on in the Award to which the parties have not had an opportunity to respond. Additional briefing is required as a prerequisite to compliance with the FTA and the Commission's own procedural rules.

SWBT asks for this and any other relief, consistent with SWBT's Comments.

Respectfully Submitted,

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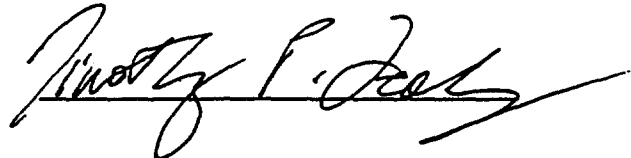
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CERTIFICATE OF SERVICE

I, Timothy P. Leahy, Senior Counsel, for Southwestern Bell Telephone Company, certify that a copy of this document was served on all parties of record in this proceeding on the 6th day of January, 2000 in the following manner:

By hand delivery, facsimile and/or by U.S. Mail.



PETITION OF COVAD
COMMUNICATIONS COMPANY FOR
ARBITRATION OF
INTERCONNECTION RATES, TERMS,
CONDITIONS AND RELATED
ARRANGEMENTS WITH
SOUTHWESTERN BELL TELEPHONE
COMPANY

BEFORE THE PUBLIC UTILITY
COMMISSION OF TEXAS

COVAD COMMUNICATIONS COMPANY'S
RESPONSE TO SOUTHWESTERN BELL TELEPHONE COMPANY'S
COMMENTS CONCERNING ARBITRATION AWARD AND
PROPOSED INTERCONNECTION AGREEMENTS

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DOCKET NOS. 20226 and 20272

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INTRODUCTION

Southwestern Bell Telephone Company ("SWBT") provides no grounds to revise or rebrief the carefully prepared Arbitration Award ("Award") and accompanying interconnection agreement language ("Agreement") submitted in these dockets. Trying to devise some reason for the Commission to revisit issues that the Arbitrators have already reviewed exhaustively and determined with great attention, SWBT resorts to exaggeration and misstatement of the record to create "new" issues where there are none.

First, SWBT complains that the evidentiary record is outdated and thus the Arbitration Award is not based on current information. If the record is stale, SWBT has no one but itself to blame. From the beginning, SWBT has stalled. It often failed entirely to produce requested documents, provide knowledgeable witnesses, and properly designate documents — all of which resulted in severe delays before and after the arbitration hearing, and led to its being sanctioned for abuse of the discovery process. SWBT cannot now come to the Commission and complain that too much time has passed and, so, rendered the record incomplete. The record is more than adequately developed, and fully justifies the Award.

Second, SWBT continually cites to the FCC's *UNE Remand Order*,¹ and to conditions SBC agreed to as part of the Ameritech merger, as if those orders set mandatory, maximum requirements to which all state commissions must adhere. That is not the law. Every provision SWBT cites sets *minimum* guidelines for compliance; the states are expressly permitted to set more stringent requirements. See, e.g., *SBC/Ameritech Merger Order*² at ¶ 358.

¹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Adopted: September 15, 1999; Released: November 5, 1999 ("*UNE Remand Order*").

² *In re Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations*, CC Docket 98-141, Memorandum

(Footnote Continued on Next Page.)

The FCC expressly acknowledges that the Telecommunications Act of 1996 ("Telco Act") "allows state commissions to establish access obligations of local exchange carriers that are consistent with our rules" and "grants state commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list." *UNE Remand Order* at ¶ 154. Contrary to SWBT's argument, those provisions set the floor, not the ceiling. The Commission has absolute authority to require "Texas-specific" enhancements, intervals and rates and costs.

Finally, SWBT alleges that CLECs will be "unjustly enriched" by the costs and rate levels the Award sets. This is just the same argument SWBT made in its post-arbitration briefing: the CLECs must accept SWBT's rates because SWBT says so. The Arbitrators determined, after careful review of the record, that SWBT's price scheme often inflates the costs for early market entrants, deters xDSL deployment, and harms competition in Texas. The Arbitrators set rates based on the evidence presented and ordered cost studies as necessary. Based on the evidence, the Arbitrators properly determined that SWBT should recover reasonable costs, *not merely what SWBT claims its costs are*.

SWBT has continuously injected uncertainty and obstacles into its negotiations and arbitration with Covad. Now, dissatisfied with the Award, it asks the Commission to order yet more delay, and have the parties start over again. SWBT provides no reason to revisit any portion of the arbitration. Covad respectfully requests that the Commission deny SWBT's latest requests.

(Footnote Continued from Previous Page.)

Opinion and Order, Adopted: October 6, 1999; Released: October 8, 1999 ("*SBC/Ameritech Merger Order*").

DISCUSSION

I. SYSTEMS ENHANCEMENTS

A. Consistency of Systems Work with *SBC/Ameritech Merger Order*

SWBT claims that the Arbitration Award requires systems enhancements that are “inconsistent” with conditions SBC agreed to as part of the FCC’s *SBC/Ameritech Merger Order*. For example, SWBT complains that the date for completion of the process for OSS enhancements under the *Merger Order* is later than the six month time frame set forth in the Award. SWBT suggests that the Commission must conform the Award to be consistent with the *Merger Order* “requirements.” SWBT Comments at 7.

SWBT ignores the fact that the *Merger Order*’s “requirements” regarding pre-ordering, ordering and provisioning of xDSL loops, are *base* standards. The *Merger Order* is merely a mechanism imposed by the FCC to lessen the anticompetitive effects of the Ameritech/SBC merger. It provides a reliable minimum standard not in any way intended to trump the state commissions’ authority to issue a different or even contrary order in a state arbitration. So, for example, if the FCC orders that enhancements be made in eight months, Texas can require, entirely consistent with the FCC’s Order, that they be made in six. The *Merger Order* expressly states that it is “[n]ot intended to limit the authority of state commissions to impose or enforce requirements that go beyond those adopted in [the *Merger*] Order.” *SBC/Ameritech Merger Order* at ¶ 358.

Further, SWBT’s pleas for consistency among the 13 states affected by the merger are disingenuous. SWBT has never wanted consistency before: it *rejected* Covad’s proposal to negotiate a master interconnection agreement to govern the relationship between Covad and SWBT in Kansas, Missouri, Oklahoma and Arkansas. See 6/28/99 SWBT Letter. It was “unwilling to enter into any Agreement in one state based upon the arbitration results of another state [Texas].” *Id.* at 2. As SWBT itself pointed out, “[t]here are different arbitration results, including different rates, different regulatory rules and different laws that are applicable in each

of the [] states.” *Id.* Now, when it suits SWBT’s interests, the autonomy of the states over their results, rates, rules and laws no longer matters. SWBT may not choose when to impose uniformity: the FCC and Congress have already made the policy determination that state commissions should have the power to make their own decisions and impose their own requirements.

Equally empty is SWBT’s claim that the record is incomplete because it does not reflect SWBT’s “OSS Plan of Record” from the SBC/Ameritech merger proceedings. SWBT Comments at 7. That omission was SWBT’s choice – it had every opportunity to offer an “OSS Plan of Record” during these arbitration proceedings. SWBT chose not to and instead arbitrated the issues it now attempts to raise again. SWBT must face the consequences of that decision and live with the Arbitrators’ Award.

B. Loop Makeup Information Obligations

SWBT argues that the *UNE Remand Order* forbids the Arbitrators to require SWBT to provide new catalogue and inventory information to competitive local exchange carriers (“CLECs”). SWBT Comments at 8. SWBT misreads both the Award and the *UNE Remand Order*: neither addresses this issue.

First, the *UNE Remand Order* requires ILECs to “provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent.” *UNE Remand Order* at ¶ 427. ILECs may not “deny[] access to loop qualification information for particular customers simply because the incumbent is not providing xDSL or other services from a particular end office.” *UNE Remand Order* at ¶ 428. In other words, an ILEC must provide the same access to requesting carriers, in the same format that it could use itself. This is what Covad asked for and what the Arbitrators, consistent with the *UNE Remand Order*, awarded.

Here SWBT tries to create a discrepancy where there is none. SWBT incorrectly states that the FCC found that ILECs “could not be required” (SWBT Comments at 8) to

catalogue, inventory and make available to competitors loop qualification information in a form that SWBT does not have available to itself. In fact the FCC merely said that *it* would not impose such a requirement. *UNE Remand Order* at ¶ 428. That does not, and cannot, affect the state commission's authority to do so. *See UNE Remand Order* at ¶ 427 (“[W]e conclude that, *at a minimum*, incumbent LECs must provide requesting carriers the same underlying information that the incumbent LEC has in any of its own databases or other internal records.”) (emphasis added).

In any event, the Arbitrators did not require SWBT to provide any loop qualification information that SWBT personnel or its affiliates do not have. The evidence demonstrated that SWBT and its affiliates have electronic access to loop makeup information. *See Award* at 79. The Award did not require SWBT to *create* databases that SWBT does not already have; it merely requires SWBT to create the interface that will give Covad electronic access to the same information. There is no dispute here.

C. Project No. 16251's Process Changes

SWBT says that the Award does not address recent enhancements to SWBT's pre-ordering processes as set forth in the affidavit of SWBT employee Carol Chapman in Project No. 16251. SWBT Comments at 8-9. These changes include expedited pre-ordering processes and the provision of theoretical loop lengths during prequalification. SWBT maintains that the Award should be revised to comport with these changes. There is no need.

If SWBT has begun making the changes Covad has requested and that the Arbitrators have ordered, there is no reason to revise the Award to include changes to SWBT's processes, which are subject to ongoing review and revision. The Arbitrators cannot possibly revise the Award any time a change in technology or access occurs — otherwise an interconnection agreement could never become final. SWBT has a good faith obligation, without rewriting the interconnection agreement, to negotiate and provide ongoing advancements to Covad. Stalling implementation of the Award to include these enhancements serves no purpose,

particularly when they are already required, by the Award, by the *UNE Remand Order* or by other Commission proceedings.

D. Uniform Application of the *UNE Remand Order* and *Merger Order*

SWBT asks the Commission to interpret the Arbitration Award “as if it incorporates all germane portions of the cited FCC orders cited in the Award.” SWBT Comments at 9. This request is essentially meaningless, and it is inconsistent with the intent of both the FCC and Congress that FCC decisions form the baseline, and not the ceiling, for state commission actions. As long as the Arbitration Award is consistent with the minimum standards and mechanisms set forth in the FCC orders -- and it is -- the Arbitrators need not formally adopt and incorporate the FCC orders into the Award.

II. COSTS, RATES AND PRICES —

A. SWBT’s Compensation for Costs Incurred

SWBT seeks compensation for its provisioning of xDSL capable loops. SWBT Comments at 10. SWBT says nothing here that it hasn’t said before. Based on the evidence, the Arbitrators determined what Covad should pay, and, when necessary, ordered further cost studies. In essence, SWBT complains that the Arbitrators refused to take SWBT’s word for what its costs are. That is no reason to revisit the Arbitrators’ cost determinations.

B. No Compensation for Manual Loop Qualification

SWBT claims that the Arbitrators erred by requiring SWBT to provide Covad, upon request and at no extra charge, with manually derived loop makeup information. SWBT Comments at 10-11. However, as the Arbitrators knew, the FCC has acknowledged that where no electronic interface for processing orders is available, extra charges for manual processing should be eliminated. *SBC/Ameritech Merger Order* at ¶ 384. CLECs should not be charged for SWBT’s inefficiency and delay.

The FCC and now the Award require SWBT to offer CLECs access to loop information existing in its OSS and related databases using mechanisms comparable to those available to its own personnel for accessing such information. *See Local Competition Order*³ at § 51.313(c). SWBT's internal processes are fully automated: it has electronic access to actual loop makeup information for its entire network. The Arbitrators ordered SWBT to provide that same electronic access to CLECs in a few short months. In the interim, providing information manually at no charge is consistent with both TELRIC and the non-discrimination requirements of the Telco Act. SWBT's retail DSL operations incur no costs for manual processing because SWBT has not imposed this cumbersome procedure on them; thus it would be discriminatory to require CLECs to pay extra for inferior service. The Arbitrators' decision also gives SWBT the incentive it needs to develop interfaces for automated access "as soon as possible." Award at 66. The sooner those interfaces are in place, the sooner SWBT will be able to avoid whatever costs it really incurs from manual processing.

C. The Award's Conditioning Costs Are Well-Supported

SWBT asks the Commission to revisit the Arbitrators' careful conclusions about loop conditioning costs. Its grounds for this request do not withstand even a cursory review.

1. SWBT's conditioning charges

SWBT claims that the Arbitrators arbitrarily reduced SWBT's proposed rates to CLECs for conditioning. SWBT Comments at 12. Not so. The Arbitrators found that SWBT should be fairly compensated for conditioning analog and digital xDSL loops at the request of a CLEC. Award at 100. In determining what this fair compensation should be, the Arbitrators considered all the evidence presented, including SWBT's own evidence that most loop

³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, Released: August 8, 1996 ("*Local Competition Order*").

conditioning will not be necessary in the future, and that the presence of load coils and repeaters will be relatively rare on loops under 18,000 feet in most cases. Award at 100-101.

The Arbitrators also properly relied on evidence indicating that SWBT did not intend to use, for CLECs' benefit, its more efficient *internal* practice of conditioning entire binder groups. Award at 104-105. Further, SWBT has segregated "clean loops," but only for ADSL service, the only type of DSL service SWBT provides. Award at 105. Finally, SWBT did not provide any cost studies for conditioning loops over 17,500 feet. Award at 101. Based on all of this evidence and much more, *see* Award at 100-107, the Arbitrators determined conditioning charges consistent with TELRIC principles as applied to develop a forward-looking network design. SWBT cannot complain that the Arbitrators did not do their job; it wants the Commission to revise these rates simply because the conditioning charges the Arbitrators awarded after exhaustive analysis do not match the inflated pricing scheme SWBT envisioned.

2. Alleged harm of over-conditioning

SWBT also argues that the Arbitrators' "low" charges for conditioning will create an "undisciplined environment which results in costs being created unnecessarily." SWBT Comments at 14. Its prime example is that over-conditioning of the SWBT network will result if CLECs order more conditioning than necessary due to the allegedly low costs incurred by them for conditioning. That is irrational.

SWBT supplies the Commission with not one shred of evidence to suggest that Covad would abuse the ordering and conditioning procedures. Covad has absolutely no incentive to over-condition. Nor could it: Covad can only request conditioning once it has ordered a loop. For that, it must have a customer. Once again, SWBT attempts to create an issue where there is none.⁴

⁴ Alternatively, perhaps SWBT is suggesting that Covad will request conditioning on loops that do not require it because it comes at such an allegedly "bargain" price. Again, that is

(Footnote Continued on Next Page.)

3. Conditioning of whole binder groups

SWBT claims that the conditioning of whole binder groups is ineffective and that dividing SWBT's costs by any multiple ignores the realities of the network. SWBT does not want to condition more loops than a CLEC requests at any given time. SWBT cites to a Missouri Commission ruling finding that without knowledge of how many loops will be leased and for how long, it cannot devise an alternative recurring charge that will compensate SWBT fully. SWBT Comments at 15.

Yet the record before the Arbitrators showed that SWBT's internal practice is to condition at least 50 loops at a time when it is necessary to dispatch a technician to condition a loop.⁵ Award at 103-04. This practice is more time- and cost-efficient than dispatching a technician to condition a single loop every time a CLEC requests it. *Id.* Further, if SWBT admittedly employs this practice for its retail provisioning of DSL service, it must, to avoid discriminating, do the same for Covad. SWBT cannot now echo the Missouri Commission's concern about assessing an adequate recurring charge when it could not even testify that it charged its own retail operations the \$900 for conditioning listed in its federal tariff.⁶ *Id.* The Arbitrators recognized that SWBT should give CLECs the same efficient low-cost provisioning it provides to its own retail DSL operations. That decision is amply supported in the record.

(Footnote Continued from Previous Page.)

nonsensical. Covad, by SWBT's reasoning, would be choosing to increase its costs to obtain something it did not need.

⁵ See ACI Exhibit 5, Direct Testimony of Terry L. Murray at 25-27 (February 19, 1999), ACI Exhibit 171, Staff Reserved RFI Responses (June 5, 1999).

⁶ SWBT's citations to the Missouri arbitration award are particularly ironic because SWBT refused to negotiate a master interconnection agreement between Covad and SWBT in four states, including Missouri, stating that it would not be appropriate to enter into any agreement in one state based on the arbitration results in another state. See June 28, 1999 SWBT letter at 2.

D. Harm of Over-Conditioning to PSTN

SWBT similarly argues that whole binder group conditioning will reduce SWBT's ability to make efficient use of its facilities to serve its basic voice grade customers. SWBT Comments at 16-17. Once again, the Arbitrators considered all the evidence presented by the parties and determined that SWBT's *own internal practice* is one of binder group conditioning, and that it is more efficient than conditioning each loop by request. There is no harm to the PSTN; the Arbitrators merely placed on SWBT -- appropriately -- the cost of any reconditioning that may be necessary if an xDSL loop is later used for voice service. Award at n.369 and accompanying text.

E. Digital Loop Rates "As Is"

SWBT argues that the rates for loops should stay the same until an additional cost proceeding is completed, given that (1) the Arbitrators found digital loops to be the same whether used for xDSL or other services, and (2) there is a true-up provision. SWBT Comments at 17.

The Arbitrators created interim rates for a reason: SWBT did not provide a cost study to support analog and digital loop rates. Instead, SWBT proposed xDSL loop rates that were identical to the UNE loop rates adopted in the Mega-Arbitration. However, on the evidence in these dockets, the Arbitrators found reliance on the Mega-Arbitration UNE loop rates to be inappropriate, particularly for digital xDSL loops. Award at 91-93. Because this uncertainty could unjustly enrich SWBT by permitting it to impose separate conditioning costs, the Arbitrators adopted the interim rates proposed by Covad and ACI.

SWBT complains that various rates create an administrative burden in that separate codes will have to be created for ordering and billing programming. SWBT Comments at 17. ACI and Covad provided documented evidence supporting the implementation of the differing rates, and SWBT failed to provide an appropriate cost study to counter this evidence. The Arbitrators have ordered SWBT to file a new TELRIC-based cost study for analog and digital xDSL loops; once it is filed and the parties have an opportunity to comment, the true-up

provision will ensure that the rates will increase retroactively if the weight of the evidence supports the higher rates SWBT requests. There is no harm to SWBT, and any administrative burden is the result of SWBT's failure to submit an adequate cost study in the first place. Award at 91- 92.

F. Shielded Cross-Connects

SWBT argues that only ADSL needs the protection of a shielded cross-connect and thus the Commission should not require shielded cross-connect and should remove charges for all but ADSL-based shielded cross-connects from the proposed Agreements. SWBT Comments at 18.

Nothing in the Award indicates that the Arbitrators *require* shielded cross-connects. They don't. Neither ACI nor Covad anticipates using shielded cross-connects, which they view as unnecessary. *See* Award at 94-95. SWBT has also stated that it will not require CLECs to use shielded cross-connects. Award at 96. The Award merely states that should a CLEC (or SWBT's retail DSL operations, for that matter) request it, SWBT should be compensated using TELRIC principles for the costs associated with providing it. Award at 96-97. SWBT can hardly complain about that. Again, SWBT just tries to create a dispute where none exists.

III. INTERVALS

SWBT states that the Award's three-business-day interval for providing loop qualification should be replaced with the three- to five-business-day interval SWBT proposed. Given the "uncertainty that accompanies the growth of the DSL market," SWBT objects to the shorter three business day interval. SWBT claims that this is especially the case when loop qualification "will be free to CLECs." SWBT Comments at 19.

Once again, SWBT bases its argument on a false premise. SWBT has the obligation to permit CLECs electronic access to loop makeup information in a few short months, and SWBT itself already has access to this information electronically. Thus, the standard

interval for loop qualification should actually be a matter of hours, not days. But as long as SWBT continues to provide the information manually, Covad should be given access to the information in a reasonable time. The Arbitrators found that three business days is a reasonable interval, and that conclusion has a solid foundation in the record. Award at 70, 81. SWBT's insistence on a more cumbersome, manual process for CLEC orders is no justification for further delay.

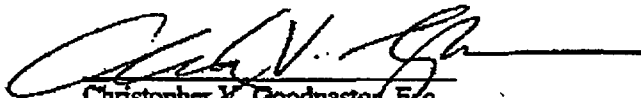
IV. PERFORMANCE MEASURES

SWBT states that it "may seek" to change performance measures, such as categorization of DSL-capable loops by length, and that it will address these performance measures in a future filing. SWBT Comments at 20. Since it does not address the issue substantively in these comments, there is nothing for the Commission to consider here.

CONCLUSION

For the foregoing reasons, the Commission should deny SWBT's request for a new hearing as well as SWBT's request that the Award and the Agreements be revised or rejected.

Respectfully submitted,



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